



U.S. Department of Justice

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Southern District of New York*

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October 5, 2012

By Hand Delivery

The Honorable P. Kevin Castel
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *Estate of Michael Heiser, et al. v. Bank of Tokyo Mitsubishi UFJ*,
No. 11 Civ. 1601 (PKC) (MHD)

Dear Judge Castel:

I write respectfully on behalf of the United States of America (the "United States" or the "Government"). Pursuant to 28 U.S.C. § 517, the United States respectfully submits this Statement of Interest regarding two issues raised in the pending motion for summary judgment in the above-referenced case.¹ Specifically, we write concerning: (1) the ownership requirements imposed by the Terrorism Risk Insurance Act ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322 (2002), *reprinted in relevant part at* 28 U.S.C. § 1610 note; and (2) whether, once a court determines that assets blocked by sanctions programs administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") are subject to TRIA, a party holding the assets nevertheless requires a license from OFAC to release those assets.

Because the United States has previously submitted its views on both of these issues in other fora, as discussed below, the Government respectfully refers the Court to those submissions, which are enclosed herein for the Court's review. As those submissions discuss in greater detail, the Government's positions, in brief, are the following: (1) a party seeking attachment or execution of assets pursuant to TRIA must demonstrate that the terrorist party or its agency or instrumentality has an ownership interest in those assets; and (2) once a court determines that certain assets are subject to

¹ 28 U.S.C. § 517 provides that "any officer of the Department of Justice[] may be sent by the Attorney General to any State or district in the United States to attend to the interest of the United States in a suit pending in a court of the United States."

TRIA, the party holding those assets does not require a license from OFAC to release them.

A. Background

Petitioners the Estate of Michael Heiser, *et al.* (collectively, “Petitioners”), victims of the 1996 terrorist attacks on the Khobar Towers in Saudi Arabia, hold an unsatisfied judgment against the Islamic Republic of Iran, the Iranian Ministry of Information and Security and the Iranian Islamic Revolutionary Guard Corps. (collectively, “Iranian Entities”), which were found to have provided support for the attacks. Pursuant to 28 U.S.C. § 1610(g), 28 U.S.C. § 1610 note, and N.Y. C.P.L.R. § 5225, Petitioners now seek an order requiring Respondent Bank of Tokyo Mitsubishi UFJ, New York Branch (“Bank of Tokyo”) to pay Petitioners the proceeds of certain funds in which the Iranian Entities allegedly have “an ownership interest.” Petitioners’ Memorandum of Law in Support of Motion for Summary Judgment and Turnover Order, dated August 10, 2012, at 1. In particular, Petitioners are seeking funds that the Bank of Tokyo is currently holding in interest-bearing deposit accounts which have been blocked in accordance with sanctions programs administered by OFAC (the “Blocked Assets”).

The Bank of Tokyo “does not oppose the ultimate relief sought by Petitioners,” but requests that the Court “make clear . . . that [the Bank’s] obligation to release any or all of the Blocked Assets is conditioned upon Petitioners first seeking and obtaining a license from OFAC authorizing [Bank of Tokyo] to do so.” Respondent’s Memorandum of Law in Response to Petitioners’ Motion for Summary Judgment, dated August 31, 2012, at 1.

B. Procedural History

On June 12, 2012, the Court alerted this Office to the existence of the instant action and informed the Government that a status conference regarding the petitioners’ proposed motion for summary judgment would be held on July 24, 2012. The Court invited the Government to attend and further stated, “If the United States wishes to take a position on any issue it shall advise this Court in writing by July 13, 2012.” Docket No. 32.

On July 12, 2012, the Government requested that its submission, if any, be due after the petitioners’ proposed motion for summary judgment was fully briefed, thus allowing the Government time to review the parties’ positions and determine which issues, if any, it would seek to address. *See* Docket No. 34. At the July 24, 2012 status conference, the Court directed that the motion be fully briefed by September 14, 2012, and that the Government submit its position by October 5, 2012. *See* Docket No. 35.

C. The Government's Position

Having now reviewed Petitioners' motion for summary judgment, Bank of Tokyo's response and Petitioners' reply, the Government respectfully submits this letter to address two issues raised by those submissions. The first issue raised by the motion is: where assets are blocked pursuant to a sanctions regime administered by OFAC, whether a party seeking attachment or execution of those same assets pursuant to TRIA Section 201(a) must demonstrate that the terrorist party or its agency or instrumentality has an ownership interest in the assets. The second issue is: whether a party holding blocked assets requires a license from OFAC to release those assets once the court has determined that such assets are subject to TRIA.

The United States has previously addressed both of these issues in other public filings. Regarding the first, the Government's position, in brief, is that a party seeking attachment or execution of assets pursuant to TRIA must demonstrate that the terrorist party or its agency or instrumentality has an ownership interest in those assets. This position is reflected in greater detail in several filings, including in a separate proceeding in this case before the United States District Court for the District of Columbia (attached hereto as Exhibit A), as well as in two cases currently before the Second Circuit (attached as Exhibits B and C): *Estate of Michael Heiser, et al. v. Islamic Republic of Iran*, 00-cv-2329 (RCL) consolidated with 01-cv-2104 (RCL) (D.D.C.), United States Statement of Interest, dated August 3, 2012; *Estate of Hausler, et al. v. Banco Santander S.A., et al.*, 12-1264 (2d Cir.), *sub judice*, Brief for the United States as Amicus Curiae, dated July 6, 2012 (Docket No. 133); *Estate of Calderon-Cardona, et al. v. Bank of New York Mellon, et al.*, 12-75 (2d Cir.), *sub judice*, Brief for the United States as Amicus Curiae, dated September 21, 2012 (Docket No. 210). Notably, the United States District Court for the District of Columbia recently issued an opinion consistent with the Government's position on this issue. See *Estate of Michael Heiser, et al. v. Islamic Republic of Iran*, 00-cv-2329 (RCL) consolidated with 01-cv-2104 (RCL) (D.D.C.), Memorandum & Order, dated August 31, 2012, at 12-19 (Docket No. 234 in 00-cv-2329) (attached as Exhibit D).

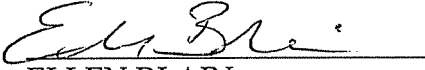
Regarding the second issue, as the United States has also previously stated in greater detail, in the event a court determines that blocked assets are subject to TRIA, those funds may be distributed without a license from OFAC. See, e.g., *Weininger v. Castro*, 05 Civ. 7214(VM) (S.D.N.Y.) Letter from the United States, dated January 6, 2006 (attached hereto as Exhibit E).

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The Government respectfully requests that this letter be docketed. Thank you for your consideration of this matter.

Respectfully,

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Encls.

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